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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:

Defining Primary Lines

)
)
)

CC Docket No. 97-181

GTE's COMMENTS

GTE Service Corporation and its affiliated
telecommunications companies

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INTRODUCTION AND SUMMARY

What emerges most of all from GTE's attempts to respond to the issues raised by the Notice is that there is no solution that meets any reasonable standard for sound Commission policy. Some "solutions" would produce results far worse than others, and GTE's Comments discuss these differences. But the inherent arbitrariness of the distinctions between, for example, primary and secondary lines invalidates all "solutions" grounded in that difference, for these "solutions" will impose grave economic distortions leading to outcomes directly opposite that intended by the Commission in that they will make impossible a broad opening to competition under conditions of competitive neutrality and economically rational decision-making.

This means the public will be denied the benefits of competition. In view of this, GTE *infra* urges the Commission to give fresh consideration to pending petitions for reconsideration. Meanwhile, discussed *infra* are GTE's views and recommendations as to the options that do the least damage. Specifically:

1. GTE urges the FCC not to make the proposed changes in the definition of "telephone company."
2. GTE urges the FCC to minimize cost, administrative burden, and customer confusion by adopting GTE's suggested Reactive Customer Self-Certification program.
3. GTE urges the Commission to simply refer to the terms of section 222 and the CPNI rules shortly to be adopted in D.96-115, in the expectation that to the extent issues involving confidential customer data arise, they will be dealt with under the terms of a recent Act of Congress and newly adopted Commission rules and policies.

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GTE's COMMENTS

GTE Service Corporation and its affiliated telecommunications companies¹ hereby offer their views in response to the FCC's Notice of Proposed Rulemaking, FCC 97-316 (released September 4, 1997), 1997 FCC LEXIS 4826 (the "Notice"), as follows:

BACKGROUND

The Notice (at paragraph 1) observes that the levels of the Subscriber Line Charge ("SLC") and Presubscribed Interexchange Carrier Charge ("PICC") -- as these charges come into effect pursuant to the Commission's "*Universal Service Order*"² and "*Access Charge Reform Order*"³ -- will be lower in the case of primary residential and

¹ GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc.

² Federal State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 97-157 (released May 8, 1997) (*subsequent citations omitted*).

³ Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, CC Docket Nos. 96-262, 94-1, 91-213, and 95-72, First Report and Order, FCC 97-158 (released May 16, 1997), 1997 FCC LEXIS 2591 (*subsequent citations omitted*).

single-line business lines than in the case of secondary residential and multi-line business lines. The Notice (*id.*) seeks to establish criteria to identify primary residential lines for purposes of determining SLC and PICC levels.

The Notice (at paragraph 2) tentatively concludes that, for these purposes, it should: (1) employ the definition of "single-line business line" set forth in the Commission's rules⁴; (2) employ "end user self-certification" to identify "primary residential lines"; (3) employ audits "to verify primary residential line counts"; and (4) possibly employ "a mandatory uniform consumer disclosure statement" that would not impinge on the privacy interests of end users.

DISCUSSION

I. THE DEFINITION OF "TELEPHONE COMPANY" SHOULD NOT BE CHANGED.

The Notice (at paragraph 9) requests comments on changing the definition of "telephone company" for purposes of applying SLCs and PICCs. In particular, the Notice (*id.*) Commission expresses concern that maintaining the current definition of "telephone company" may encourage businesses to purchase one line from the Incumbent Local Exchange Carrier ("ILEC") and another line from a competitive LEC (CLEC) or wireless carrier, thereby maintaining its single line business status with the ILEC and consequently paying lower rates. This is a correct statement of a very real risk: that the economic effects of essentially arbitrary agency definitions and borderlines will dictate actions by customers and competitors rather than real economic factors,

⁴ 47 C.F.R. section 69.104(h).

thereby producing effects that undercut the competitive process. The point is this effect is not limited to the item just addressed -- a single agency definitional rule providing incentives for business customers to shift from one competitor to another. This phenomenon of unintended agency dictation permeates the new rules adopted by the Commission as indeed it permeated the rules being changed.

In this particular case, the Commission should not change the definition of "telephone company" for purposes of determining when a multi-line business SLC should be assessed by an ILEC. Changing the definition would create a compliance quagmire that would oblige local service providers to exchange competitively sensitive information. Specifically, it would require a non-ILEC providing a line to a business customer to notify the ILEC of that fact, with the expectation that the ILEC would change an existing business single line SLC to the multi-line SLC level. Further, each time an ILEC sold the first business line to a customer, it would be necessary to ask all non-ILECs doing business in the area whether that customer also had a business line from one or more of the CLECs.

It is unreasonable for the Commission to expect local service providers to exchange such confidential information. Further, by establishing higher SLCs and PICCs only for secondary residential lines and for multi-line business customers, while failing to provide for the difference between those higher charges and the perpetually frozen \$3.50 single line SLC and PICC from an explicit universal service fund, the Commission has entrenched hidden subsidies within the ILEC access charge rate structure in conflict with the clear requirements of the Telecommunications Act of 1996, specifically 47 U.S.C. subsections 254(d) and (k). And in effect, rather than providing

for competitive neutrality in a competitive market, the agency would have delivered slabs of customers to favored competitors. Thus, the proposed definitional change would be a giant step in the direction of economic irrationality and heavy-handed governmental dictation of market results masquerading as pro-competitive policy. This would produce results directly counter to the Commission's policies favoring economic rationality, competitive neutrality and efficiency.

To be specific, drawing arbitrary distinctions between single line and multi-line businesses means that the customers being assessed the highest PICCs are the ones who have the most flexibility to change their service to a provider that does not have to charge SLCs or PICCs. The inevitable result is that the mandatory PICC charge distorts the local service provider selection process, violates the requirement to fund universal service in a competitively neutral manner, and could lead to an unlawful "Taking" because it dictates the loss of the ILEC's customer, thereby denying the ILEC a reasonable opportunity to recover its costs.⁵

Accordingly: GTE urges the FCC not to make the proposed changes in the definition of "telephone company."

⁵ See *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989).

II. GTE URGES THE FCC TO ADOPT A PROGRAM OF REACTIVE CUSTOMER SELF-CERTIFICATION RATHER THAN AN UNWORKABLE PROGRAM OF ACTIVE CUSTOMER SELF CERTIFICATION.

- A. Since the program contemplated by the Notice -- which GTE refers to as "Active Customer Self-Certification" -- is unworkable, GTE recommends adoption of a program of Reactive Customer Self-Certification, which will be just as effective in producing results that fit the concept of customer self-certification.**

All the options discussed in the Notice for applying the primary line/secondary line distinction to SLCs and PICCs will produce results directly counter to the Commission's policies favoring economic rationality, competitive neutrality and efficiency.

The Notice (at paragraphs 9 and 10), recognizing the difficulties associated with other approaches, correctly reaches the (tentative) conclusion that price cap ILECs should be able to rely on customer self-certification in making the primary/secondary distinction. Then the Notice goes on (at paragraph 10) to tentatively conclude erroneously that the appropriate way to achieve this outcome is by having ILECs collect information from millions of customers. This approach is completely unworkable, for several reasons:

First: Within the time limits of the Commission's program, there is simply no way a balloting process of any kind could be carried out.

Second: The entire process (the mailings and the receipt of responses and relating this to customer billing, and so forth) would be incredibly expensive when applied to roughly ten million accounts where there are multiple lines; and

Third: Based on experience on the part of GTE and the industry, it can be said confidently that only a small portion of the residential customer base (less than ten

percent) will be likely to respond. This small and fragmentary base of data will be essentially useless in addressing the primary/secondary question. Thus, a program of Active Customer Self-Certification along the lines of that discussed in the Notice would be a complete waste of what is likely to amount to millions of dollars on a nationwide basis.

GTE suggests that the same outcome can be achieved without these extreme and unjustified costs and burdens. This can be accomplished by a program GTE calls "Reactive Customer Self-Certification" under which the ILEC:

(1) identifies for all of its residential customers based on existing ILEC account data and criteria adopted or permitted by the Commission whether any customer line is primary or secondary; and

(2) notifies the customer(s) involved of this determination and that the customer may have that determination changed at any time by notifying the ILEC.

(3) on receipt of notification by the customer (which may be oral), changes the primary/secondary designation accordingly.

This is an entirely workable plan. The initial designation of primary/secondary, which is based on information already in the hands of the ILEC, is merely a preliminary identification subject to correction by the customer. Thus, it is tantamount to a "default" assignment except that it occurs before the rest of the process rather than after, thereby avoiding a very costly and empty balloting ritual that is likely to produce at best a response from only one customer in ten -- which is essentially useless data in any case.

This is a workable approach to achieving just what the Notice seeks -- an effective and economical customer self-certification program. It avoids any need for massive and pointless mailings. It avoids any need for the ILEC to inquire into matters many customers consider private. The customer will be informed of the necessary facts concerning the Commission's criteria and will advise the ILEC accordingly. Inasmuch as the circumstances surrounding the lines located in a particular residence are known to the customer and not to the ILEC, the ILEC will not investigate or challenge these self-certifications.

Under this plan, the ILEC will have to deal with a far smaller percentage of the residential customer base, and its dealings with customers will be limited to recording the customer's certification. While this is a far better procedure than Active Customer Self-Certification, the recommended procedure would still entail considerable costs since it would present the embedded customer base with questions they will find confusing, and in some cases the exercise of an option may make a difference in cost that the customer considers significant. There will be significant costs associated with any approach to implementing the primary/secondary distinction.

Because of cost and practicality, GTE opposes any form of self-certification of customer lines that involves mailing a form to customers and asking them to respond. The tremendous and unjustified expense imposed on the ILECs in creating, mailing, receiving, and processing millions of forms means adopting this alternative would be irresponsible.

The Notice (at paragraph 5) discusses how the burden of Active Customer Self-Certification would fall on the customer and on the ILEC. There would indeed be a

heavy burden on the customer, but this would be dwarfed by the burden imposed on the ILEC, which will have to prepare customer notification materials that properly explain the reasons for the changes in terms sufficiently understandable by the customer. Literally millions of these forms or packages will have to be mailed to customers without any reasonable expectation that, once received, they will be correctly filled out or returned at all.⁶ Once distributed to the customers, an entire receiving mechanism, which does not exist today, would have to be put into place. Finally, all this new information will have to be manually entered into recently modified systems. This obviously adds cost to an already burdensome and economically inefficient process.

No matter how much effort and care is taken to develop materials being provided to the customer, it is impossible to provide an explanation that will be completely understood by millions of customers..⁷ Experience teaches that the ILEC will ultimately have no control over whether customers respond at all to the request to self-certify their lines, no matter how many follow-up messages are sent. Because at least ninety percent of residential customers are likely to be unresponsive, the ILEC ultimately would be forced in any case to have recourse to the best data available absent

⁶ In many states, there are requirements to print all customer notifications in multiple languages. Some states require that the PUC pre-approve notification language.

⁷ Some customers will become confused about the need for this new requirement and will undoubtedly contact the ILEC for further explanation. This activity will create additional customer contact activity which has not been built into ILEC staffing levels. Moreover, these additional contacts will have negative impacts on customer contact time and answer time measurements to which ILECs are accountable to state regulatory bodies.

customer input. This is the ILEC's account data, which GTE believes is satisfactory for the purpose of making a preliminary determination subject to correction by the customer.⁸

Finally, it is manifest that any methodology requiring customer balloting is ruled out by the short time remaining till January 1, 1998. The Commission has not yet adopted its criteria; until those criteria have been identified, serious work on addressing the mass of customers cannot commence. And a period of at least four months would be required to carry out the process. The Reactive Customer Self-Certification program recommended by GTE is thus the most practical, the most economical by far, and the most likely to be do-able within existing time limits. It also offers the advantage of minimizing customer complaints because the key decision will be made, as intended, by the customer himself or herself.

Accordingly: GTE urges the FCC to minimize cost, administrative burden, and customer confusion by adopting GTE's suggested Reactive Customer Self-Certification program.

⁸ The Commission has previously recognized in other contexts that it is highly unlikely that a sizable number of customers will provide a positive response to mail inquiries. See, e.g., Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Second Report and Order, CC Docket No. 91-115, 8 FCC Rcd 4478, 4486 (1993) (customer notification requirements specified by the Commission regarding Billing Name and Address). Thus, in the BNA proceeding, the Commission first required a positive response, but reconsidered and ultimately required a customer response on an exception basis. See Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Second Report and Order, CC Docket No. 91-115, 8 FCC Rcd 8798, 8810 (1993) (customer notification requirements specified by the Commission regarding Billing Name and Address).

B. GTE suggests a four-step approach.

In GTE's view, for purposes of the Reactive Customer Self-Certification program, its records are sufficient to make a plausible distinction between primary and secondary lines -- especially when it is considered that the company's determinations are merely preliminary and subject to correction by the customer's notification. All that is required is Commission action permitting ILECs to make consistent determinations based on company records and workable criteria either adopted by the ILEC and permitted by the FCC or adopted by the FCC. Given the extreme arbitrariness of the primary/secondary concept itself, the specific criteria employed in the preliminary selection are far less significant when the customer is able to correct the designation by simple notification.

If the Commission decides it must articulate criteria for making the primary/secondary distinction, then these criteria should be competitively neutral, straightforward and easy to use, , and not difficult for customers to understand. The other concepts discussed in the Notice (at paragraph 6) -- defining "primary" in terms of residences, households, or the like -- are not likely to be workable. GTE must express concern about the cost and complications of being required to make determinations based on anything outside its own records, for this leads to inquiries addressed to customers with again the great majority of customers not responding; and it would require the company to make decisions based on necessarily incomplete knowledge to the prejudice of its own customers.

Further, such a word as "household" today has highly elastic connotations and places the inquiry right in the middle of customer sensitivities about privacy.

Necessarily, there is an unacceptable implication of invasion of privacy if the ILEC

attempts to involve itself in the living arrangements of its customers. For this reason, the Commission should summarily reject any definition of "primary" based on the term "household" or similar expressions.

The individual telephone subscriber exists within a unique "social entity" with those who have a significant relationship to the subscriber. This social entity may be as simple as an individual living alone or as complex as a multi-generation family all living under the same roof. Subscribers, as well as all other persons having a significant relationship to the subscriber, use the primary line at a particular location as the primary connection to the public network.

What unites the social entity to a primary phone service is the importance the social entity places on that primary service. For example, a subscriber representing a social entity, whether it is simple or complex, will require a primary line to maintain contact with relatives, employers, schools, and a wide variety of institutional relationships. Any other services billed to the same subscriber at the same location simply do not have the same level of importance to the social entity; although, to be sure, it is possible that other phone lines billed to that subscriber at that location could be used for the same purposes. These additional lines form, in essence, a secondary or non-primary relationship to that subscriber and cannot be viewed in any other manner.

It is also possible to have more than one primary line billed to the same subscriber at the same location. For example, it is not uncommon to have an elderly parent living with adult children. In order to preserve and protect the dignity of the parent, a primary phone service is installed for the parent and billed to the adult child as a matter of economic efficiency. It is unfair to penalize this subscriber by designating

the parent's line as non-primary when another subscriber simply puts money in the parent's checking account and lets the parent pay the bill directly. This is also a perfect example of why it is competitively harmful to the ILEC to be forced to pick and choose primary lines among a myriad of similar situations without also using a customer-initiated correction process (the customer simply notifies the ILEC of a change in status), as in the case of GTE's Reactive Customer Self-Certification.

Adopting GTE's recommendation of defining primary lines in terms of subscriber account at a location avoids much of the customer confusion and the inherent unfairness of an address-based definition. For example, two college roommates, each a simple social entity, attach the same level of importance to their primary line. Neither roommate would provide the other's phone number to relatives, employers, or anyone else as the primary method of contacting them. Yet, an address-based definition would force one line to be primary and the other to be non-primary with its higher charges.

For good reason, the Notice anticipates eliminating the residence choice by noting that defining "primary" as the primary line to a primary residence would not allow two households (*e.g.*, two different subscribers) in a single residence each to subscribe to a line that is subject to the primary-line level SLC and PICC. GTE agrees. Because residence-related criteria make no allowance for unconventional arrangements, they are wholly unsuitable. Moreover, a residence-based approach is unworkable because its execution is dependent on data input from customers and -- as said several times already -- ninety percent of customers will not respond.

In contrast, company records provide a sufficient base of data for a preliminary determination subject to correction by the customer. By default, this will have to be the basis anyway for the vast majority of customers who never respond. And company account data comprises an objective record reflecting a business relationship that in a great many cases reflects relationships within a family or group, *i.e.*, based essentially on who pays the bills.

Thus, GTE most emphatically urges the Commission to put aside the notion of requiring the ILEC to conduct an inquiry into determination of the primary residence of the subscriber. Insistence on this approach would mean that only one competitor, the ILEC, would be placed in the untenable position of confronting, and appearing to pass judgment on, a customer's personal and private living arrangements. When a subscriber has more than one home, it will be inappropriate and virtually impossible for the ILEC to question the subscriber's decision regarding a primary residence. The ILEC simply has no basis on which to challenge (or wish to do so) the assertion of the subscriber as to place of residence.

The Commission wisely adopts customer self-certification as the keystone to the process. The Reactive Customer Self-Certification program gives this effect in a highly economical and practical way. Therefore, GTE recommends the following four-step approach to implementing such a program:

First, either the Commission establishes the primary/secondary criteria, or it accepts criteria adopted by the ILEC, mindful that a customer line's status is always subject to revision by the customer on notification to the ILEC.

Second, an ILEC makes the initial determination in light of company records.

Third, the ILEC notifies customers of the new federal requirements. Included in this notification will be (1) an explanation of the applicable criteria and (2) information that tells the customers when they may expect to see the changes on their bill. This notification can be included in the billing process.⁹

Fourth, the ILEC will change the status of any customer on customer notification, which may be given orally.

This four-step approach is administratively simple, workable, and would minimize customer dissatisfaction since it reflects the customer's own choice. It recognizes customer differences while maintaining the essence of self-certification -- the approach favored by the Commission -- and without massive expenditures.

Accordingly: GTE urges the FCC to adopt a Reactive Customer Self-Certification plan by implementing the foregoing four-step approach.

C. The Commission should recognize prior existing state definitions of primary lines and allow ILECs to use that definition, even if it differs from the federal definition.

If a state PUC has adopted a definition of primary/non-primary lines for intrastate universal service fund or intrastate SLC purposes prior to the release of the FCC's order, the FCC should permit the state PUC definition to be used for both federal and state purposes in that state. Customer confusion and irritation will reign if customers are provided different definitions for the same services.

⁹ A bill message is the most convenient for the customer. Customers are accustomed to seeing notification about billing changes being reflected on their bills.

For example, the California PUC (CPUC) has established a process for determining primary lines as part of its California High Cost Fund B (CHCF-B) proceeding.¹⁰ In this resolution, the CPUC defines "Primary line" thus: For purposes of the CHCF-B, "primary line" is the first line to a household.¹¹ Further, the CPUC has ordered that all service providers are required to provide their customers a confirmation letter setting forth a brief description of the services ordered and itemizing all charges that will appear on the customer's bill.¹² While the Commission's quest for a definition of primary lines is still in the inquiry stage, it is reasonable to project that there is a chance it will be at odds with the definition currently in practice in California. A situation like this can only result in the service provider looking inconsistent, confused, and arbitrary to its customers. For this reason, the Commission should permit local service providers to use the state definition of primary lines when a state definition predates that of the FCC.

III. REGARDLESS OF THE DEFINITION THAT IS FINALLY ADOPTED, THE COMMISSION MUST ALLOW A REASONABLE TIME FRAME FOR IMPLEMENTATION OF THE PRIMARY/NON-PRIMARY SLC AND PICC DISTINCTION FOR THE EMBEDDED BASE OF SUBSCRIBERS.

In the course of working to implement the requirements of the FCC's *Access Charge Reform Order*, GTE (and undoubtedly other ILECs) has had to make a selection of primary lines in order to prepare for implementation on January 1, 1998, in

¹⁰ California Public Utilities Commission, Resolution T-16018, (rel. Apr 23, 1997).

¹¹ *Id.*, Appendix A, 1.C.

¹² *Id.*, at 5.

compliance with the *Access Charge Reform Order's* requirements. This selection process is also being used to formulate the tariff filing in support of this same order. If the FCC adopts primary line criteria that depart from that being implemented by GTE's selection, it will not be possible to implement the bifurcated SLC and PICC structure on January 1, 1998.

Irrespective of the criteria adopted by the FCC, if the Commission insists on implementing its customer self-certification methodology as proposed, with its associated balloting implications, there is clearly not enough time in the three months remaining till January 1 to develop and complete a process that hinges upon customers receiving and returning a ballot-type document. In addition to the overwhelming logistics of creating, mailing, receiving, processing, and storing customer notification messages (in multiple languages), ILECs also must comply with specific state PUC requirements about advanced notification of customers concerning forthcoming billing changes.¹³

Further, changes such as these, generated by the creation of this new distinction between residence lines, ripple through the entire foundation of an ILEC's operation. Customer contact personnel must be trained to properly respond to customer

¹³ As an example of the time required to implement the Notice as proposed, the customer notification portion of this would require a minimum of four weeks for writing the verbiage (possibly in several languages) and gaining PUC approval (where applicable), four weeks for production, seven weeks for distribution, and 30 to 45 days allowance for customers to respond. This is a total of between 19 and 21 weeks after the release of the Commission's definition. In states where PUC approval is required for all notifications, it will be necessary to add one to two weeks to this schedule.

questions, customer record systems must be modified to capture the new data regarding primary lines, and billing systems must be changed to properly bill customers. Adequate time must be allowed for the completion of these activities.

For the reasons described here, GTE most urgently suggests the Commission delay implementation of the Notice for a suitable period following the release of the Commission's decision identifying its approach and its criteria. If the Commission decides to delay implementation, it should direct ILECs to treat all residential lines as primary for SLC and PICC application purposes in the interim.

IV. ILECS ARE BEST EQUIPPED TO CREATE THE MOST APPROPRIATE LANGUAGE TO CONVEY THE FCC'S PRIMARY/NON-PRIMARY DEFINITION TO THEIR CUSTOMERS.

In concert with a tentative conclusion to permit ILECs to use customer self-certification to identify primary lines, the Notice (at paragraph 10) further seeks comment on the language ILECs might use to communicate to subscribers that they will have to determine their primary line. Specifically, the Notice (*id.*) asks if it should adopt uniform language or permit ILECs to devise their own method of acquiring this information. This question has been asked and answered numerous times in the past. The Commission should follow its long-standing and successful practice of specifying

the basic information that is to be conveyed to subscribers and then allowing the carriers to determine the most effective way to impart that information.¹⁴

There is ample precedent. For example, in the Caller ID proceeding,¹⁵ the Commission asked whether it should specify the customer notification language. There was strong opposition to agency-imposed language;¹⁶ and the Commission itself agreed that education requirements prescribed by the Commission are not necessary.¹⁷ There is no reason to believe anything has eroded the wisdom of that conclusion.

Accordingly: There is no basis now for the Commission to impose a uniform language requirement on ILECs, regardless of the method ultimately chosen to determine primary lines.

¹⁴ See, e.g., Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Second Report and Order, CC Docket No. 91-115, 8 FCC Rcd 4478 (1993) (customer notification requirements specified by the Commission regarding Billing Name and Address); recon., 8 FCC Rcd 6393 (1993), second recon., FCC 93-535 (released December 7, 1993); Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992 - Compatibility Between Cable Systems and Consumer Electronics Equipment, First Report and Order, ET Docket No. 93-7, FCC 94-80 (released May 4, 1994) at paragraphs 71-74.

¹⁵ CC Docket 91-281 Rules and Policies Regarding Calling Number Identification Service - Caller ID.

¹⁶ See, e.g., GTE FNPRM Reply at 2, US West FNPRM Reply at iii, and USTA FNPRM Comments at 4.

¹⁷ Rules and Policies Regarding Calling Number Identification Service - Caller ID, CC Docket 91-281, FCC 95-187 (rel May 5, 1995) (Memorandum Opinion and Order on Reconsideration, Second Report and Order and Third Notice of Proposed Rulemaking), para 139.

V. FOR FUTURE CUSTOMERS, THE FIRM SELLING LOCAL SERVICE TO A CUSTOMER SHOULD BE RESPONSIBLE FOR OBTAINING THE CUSTOMER'S DECLARATION OF PRIMARY OR SECONDARY LINE.

The discussion thus far has focused on establishing primary lines for the embedded base of ILEC customers. On a going-forward basis, however, additional issues arise. The Notice (*id.*) recognizes this and seeks comment on the role of resellers and, specifically, whether resellers should be required to identify the primary and secondary lines of their customers and relay that information to the ILECs, or whether the ILECs should identify the primary and secondary lines for resellers customers directly. It would be inappropriate for the Commission to adopt a requirement that would place the ILEC between the reseller and its end user customer.

If a reseller provides local service to a customer, the reseller should be responsible for obtaining the customer's declaration as to the primary or non-primary status of the line. The reseller should be responsible to provide that information to the facilities provider. The reseller is the only entity with a relationship with the customer, and thus is the only entity positioned to request the customer's declaration.¹⁸ Further, the reseller has OSS access which is identical to that of the ILEC. For this reason, the ILEC should incur no additional expense. Moreover, the notification from the reseller will be automatic and timely. Under no circumstances should the reseller be required to provide records concerning their end users to the ILEC. To the extent that the

¹⁸ California Public Utilities Commission, Resolution T-16018, (rel. Apr 23, 1997), Appendix A, section 5. This is the process adopted by the California PUC. The California PUC requires resellers to identify for their facilities-based carrier of last resort (COLR) the lines that they resold that are primary or non-primary lines based on the answers given by their customers.

Commission decides there is a need to verify records, each provider of service to end users should be held accountable for the accuracy of those records.

Accordingly: GTE recommends that the Commission require carriers selling local service to be responsible for establishing their customer's line status.

VI. THE CLASSIFICATION OF A CUSTOMER LINE AS PRIMARY OR NON-PRIMARY INVOLVES CPNI; HOWEVER, NO ADDITIONAL PROTECTIONS ARE NEEDED.

GTE must express concern with what it believes to be the unintended effect of the following tentative conclusion stated in paragraph 16:

We tentatively conclude that we should require ILECs that collect this information [identification of households and primary residences as well as self-certifications] to use this information only for purposes of determining the correct SLC and PICC for individual consumers' lines, and not disclose it or permit access to it for any other purposes.

The information thus mentioned in paragraph 16 appears likely to include data that comes within the term "Customer Proprietary Network Information" (CPNI) as defined in 47 U.S.C. subsection 222(f)(1)(A), *i.e.*, "information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship"; and also as defined in 47 U.S.C. subsection 222(f)(1)(B), *i.e.*, "information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier."

To the extent the data in question comes within the definition of CPNI, disposition of that data is already governed by section 222(a) through (e), and will come under whatever Commission rules are adopted to implement the statutory mandate.

Because the Commission has not yet issued its decision in CC Docket No. 96-115 ("D.96-115")¹⁹ adopting rules implementing section 222, the precise FCC rules concerning CPNI cannot be defined today,²⁰ but it appears safe to assume these rules will follow the pattern of the legislation being implemented. Even though the FCC's paragraph 16 concerns come right within the subject matter of section 222, the severe and burdensome restrictions reflected in the tentative conclusion of paragraph 16 go far beyond anything contemplated by section 222.

Under subsection 222(c)(1), for example, the telecommunications carrier that receives a customer's individually identifiable CPNI may use, disclose or permit access to it in connection with the telecommunications service from which the information is derived. This use, disclosure or access is not limited by subsection 222(c)(1)(A) to narrow purposes, *e.g.*, "only for the purposes of determining the correct SLC and PICC for individual consumers' lines" as indicated by the quoted language of paragraph 16. Moreover, subsection 222(c)(1)(B) further liberalizes the provision by saying the telecommunications carrier may use, disclose or permit access for purposes of "services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories."

¹⁹ See Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Information, CC Docket No. 96-115, Notice of Proposed Rulemaking, 11 FCC Rcd 12513 (1996).

²⁰ For this purpose, the FCC's own CPNI restrictions under 47 C.F.R. 64.702, which concern the furnishing of enhanced service, can be disregarded.